

## Standard Terms and Conditions

### M-5

The following terms and conditions shall apply to all merchandise and equipment (hereinafter collectively referred to as "Equipment") described in the invoice, lease, proposal, purchase order acknowledgment, or other instrument to which this instrument is attached or in which reference is made of the "Microfluidics M-5 Standard Terms and Conditions".

1. All references herein to "Seller" shall mean Microfluidics Corporation. The terms "Buyer" shall include a lessee of the equipment during the term of the lease, regardless of whether any purchase option is exercised.
2. Except where Equipment is sold or leased by Seller under terms obligating Seller to install the same on Buyer's premises, risk of loss or damage to shall pass to Buyer at the time the Equipment is delivered by Seller to the carrier. When Equipment is sold or leased on an "installed" basis, risk of loss or damage to the Equipment shall pass to Buyer upon completion of installation by Seller. Each shipment shall stand as a separate sale and is subject to credit arrangements or to receipt of cash. If payment is not made in accordance with terms, or if at anytime in Seller's judgment Buyer's credit standing has been impaired, Seller may withhold shipments of any Equipment called for hereunder, until satisfactory cash or credit arrangements have been established.
3. Neither party hereto shall be liable for any failure or delay in delivering, repairing, or replacing the Equipment or any portion thereof if such failure or delay is due to fire, strike, labor controversy, inability to obtain labor, materials or components from usual sources of supply, governmental order, or any other cause or circumstances beyond the reasonable control of the party obligated to act; provided, however, that if any Equipment or component thereof called for hereunder is to be manufactured especially for Buyer, and manufacture is suspended or terminated for any reason, Buyer agrees to take delivery of and make payment for such Equipment or component thereof as has been completed and is in process as of the date of termination.

Seller reserves the right at any time to allocate its supply available for sale among any or all purchasers on such basis as it may deem fair and practical without liability for any failure to deliver which may result from such allocation.

4. Seller makes the following warranties to Buyer, subject to all of the terms, conditions and limitations hereinafter set forth:
  - a. All technical support installation, warranty, and post warranty services are provided only at the shipping destination. This warranty is NONTRANSFERABLE from one location to another without prior written consent of Microfluidics Corporation.
  - b. Seller warrants that at the time of installation of the Equipment on Buyer's premises (if the sales or lease is on an "installed basis"), otherwise at the time of delivery of the Equipment to the carrier, the Equipment will be free from defects in materials and workmanship. Seller agrees that during a period of 1 year following installation of the Equipment or delivery of the Equipment to the carrier, as the case may be Seller will replace, repair or otherwise correct any defect in material or workmanship which existed in the Equipment at the time of installation or delivery, provided that Buyer notifies Seller of such defect in writing within eight (8) days after Buyer knows or has reason to know thereof, and provided further that inspection of the Equipment by Seller discloses that such defect developed under normal and proper use of the Equipment. Certain wear items set forth hereinafter are warranted only for defects in material or workmanship. Failure of such listed parts and components due to wear and tear is not warranted against for the one (1) year warranty period but only for a period of ninety (90) days after start-up of the Equipment at Buyer's location: interaction or reaction chambers, auxiliary processing modules, elastomeric seals, back-up rings, o-rings, and gaskets.
  - c. Seller warrants that the Equipment will comply with the specifications therefore as described in Seller's catalog or standard literature, subject always to the specific provisions of Seller's written proposal to Buyer. Seller shall not be bound by any specifications to which it has not agreed in writing.
  - d. If Seller is unable to replace or repair or otherwise correct defects in the Equipment, or to cause the Equipment to operate in accordance with its specifications, after reasonable efforts to do so (the nature and extent of such efforts to be determined in Seller's sole discretion), Seller may elect to accept the return of the Equipment, in which event Seller shall refund to Buyer the purchase price or rentals theretofore paid by Buyer to Seller or such portion thereof as may be reasonable after taking into account such commercial use, if any, as the Buyer has been able to make of the Equipment while it is in Buyer's possession.
  - e. The extent, if any, to which Seller is making any warranties of merchantability or fitness for a particular purpose is described in and limited to the specifications herein before referred to. SELLER SHALL NOT BE BOUND BY ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARISING UNDER THE UNIFORM COMMERCIAL CODE OF ANY STATE OR OTHERWISE IMPLIED BY LAW, ALL OF WHICH ARE EXPRESSLY EXCLUDED.
  - f. Seller makes no warranty concerning components or accessories not manufactured by it. However, in the event of the failure of any component or accessory not manufactured by Seller, Seller will give reasonable assistance to the Buyer in obtaining from the respective manufacturer whatever adjustment is reasonable in the light of such manufacturer's own warranty.

- g. EXCEPT AS STATED ABOVE, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), STATUTORY OR OTHERWISE; AND EXCEPT TO THE EXTENT STATED ABOVE, SELLER SHALL HAVE NO LIABILITY UNDER ANY WARRANTY, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), STATUTORY OR OTHERWISE.

REPRESENTATIONS AND WARRANTIES MADE BY ANY PERSON INCLUDING DEALERS AND REPRESENTATIVES OF SELLER, WHICH ARE INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THIS WARRANTY (INCLUDING BUT NOT LIMITED TO THE LIMITATIONS OF THE LIABILITY OF SELLER AS SET FORTH ABOVE), SHALL NOT BE BINDING UPON SELLER UNLESS REDUCED TO WRITING AND APPROVED BY AN OFFICER OF THE SELLER.

- h. Seller's obligations and Buyer's remedies for breach of warranty shall be limited to those hereinbefore set forth. No suit or action against Seller for breach of warranty may be commenced by Buyer against Seller after one (1) year following delivery of the Equipment to the carrier or the installation of the Equipment on Buyer's premises, as the case may be; but nothing herein contained shall be deemed to expand the Seller's obligations or the Buyer's remedies for breach of warranty beyond the provisions set forth above.
- i. Buyer shall use and operate the equipment in a careful manner and only in accordance with written operating instructions furnished by Seller. Seller shall have no liability to Buyer for breach of warranty or otherwise if Buyer shall have operated the equipment other than in accordance with Seller's written operating instructions. If Buyer claims that Seller has failed to furnish such instructions, it shall be Buyer's responsibility to obtain the same from Seller before commencing use or operation of the equipment.
5. Seller's liability for damages under this contract shall in no case exceed the purchase price of the Equipment claimed to be defective or to have caused damaged. Equipment shall not be returned to Seller without Seller's written permission.
6. If any suit or proceeding is brought against Buyer based upon a claim that any Equipment furnished by Seller constitutes a direct infringement of any United States patent having a claim or claims covering the Equipment, then at any time after Seller has been notified by Buyer of such suit or proceeding, Seller, at its own option, shall either (i) procure for the Buyer the right to continue using or selling said Equipment, or (ii) replace the same with non-infringing Equipment, or (iii) modify the Equipment so that it becomes non-infringing Equipment, or (iv) remove said Equipment and refund the purchase price (and/or rentals) and transportation costs thereof. Seller shall have no other or further liability for patent infringement.
7. All prices and rentals charged by Seller to Buyer shall be exclusive of any applicable sales, use, and excise taxes (all of which shall be paid by Buyer), and shall be EXW (Incoterms2000) Seller's place of shipment.
8. Seller shall not be bound by any terms, provisions, or conditions relating to the sale or lease of equipment to Buyer other than those expressly provided for in Seller's invoice, written proposal, purchase order acknowledgment, lease, or this instrument, unless expressly assented to by Seller in writing. In the event that any provisions of Buyer's purchase order are inconsistent with any of the provisions of this instrument or of Seller's invoice, proposal, lease, or purchase order acknowledgment, the provisions of this instrument or of Seller's invoice, proposal, lease or purchase order acknowledgment shall control.
9. Buyer by purchasing the Equipment acknowledges and agrees that the Equipment embodies and/or utilizes Seller's valuable intellectual property, know-how and trade secrets, including, without limitation, confidential, proprietary and trade secret information associated with the design, operation and use of the interaction or reaction chamber associated with such Equipment (collectively, the "Trade Secret Information"). Buyer hereby agrees, represents and warrants that it will not, nor will it aid, assist or permit any other person to: (i) tamper with the Equipment, including specifically the interaction or reaction chamber thereof, (ii) utilize any imaging equipment or other modality to reveal the inner structures and/or designs of the Equipment, including specifically the interaction or reaction chamber thereof, (iii) attempt to disassemble or reverse engineer the Equipment, including specifically the interaction or reaction chamber thereof, or any interaction or reaction chambers purchased, rented or used by it, or (iv) otherwise discover and/or utilize any of the Trade Secret Information. Buyer further agrees, represents and warrants that it will not disclose, nor will it aid, assist or permit any other person to disclose, any information which it may learn or discover about the materials and methods of construction, design, assembly, functioning, geometries, measurements and tolerances of the internal components of the Equipment, including specifically the interaction or reaction chamber(s) thereof and the functionality that it provides. Buyer furthermore agrees that its violation of any of the foregoing provisions shall make it liable to MFIC Corporation and/or its operating subsidiary, Microfluidics Corporation, for any and all actual and potential, direct and indirect, incidental and consequential damages, including, without limitation, lost profits, arising therefrom, as well as any and all equitable relief as a court may impose, to remedy any such violation.